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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,623	06/13/2001	Tadeusz Kemnitz	P-9913a	5286

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EXAMINER

TRAN, LOUIS B

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/879,623

Applicant(s)

KEMNITZ, TADEUSZ

Examiner

Louis B Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12 and 14-17 is/are rejected.
- 7) ☒ Claim(s) 10, 11 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 06/13/2001 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.
2. The information disclosure statement filed 06/13/2001 fails to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. It has been placed in the application file, but the information referred to therein has not been considered.
3. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Election/Restrictions

4. Applicant's election without traverse of Group I, claims 1-17, in Paper No. 6 is acknowledged.

5. Claims 18 and 19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 2 recites the limitation "POS_THEORT(t)" in line 5 of claim 2. There is insufficient antecedent basis for this limitation in the claim.

With respect to claim 2, the limitations POS_THEORET (t), POS_REAL(t), S(t), and E_LIMIT are indefinite because it is unclear what scope these variables cover. Claim 2 also cites two variables POS_THEORET(t) and POS_THEORT(t) and it is uncertain if these variables are meant to mean the same position.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

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patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claim 16 is rejected under 35 U.S.C. 102(e) as being anticipated by Grove et al. (6,105,543).

With respect to claim 16, Grove et al. anticipates the improvement to a capping machine comprising a central processing unit for setting parameters that govern application of torque transmitted by said cap driver, and a servocontroller interfaced for bi-directional, communication with said central processing units, said servocontroller generating an output signal to said driving means based on the position of said cap driver for torquing said caps such that said predetermined torque is attained as described in column 5, lines 36-57 and as seen in Figure 1.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1, 2, 5-9, 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grove et al. (6,105,343) in view of Stover (2,891,366) and further view of Ruhl et al. (5,301,488).

Grove et al. discloses the invention substantially as claimed including a rotary capping apparatus for applying screw-on type caps to containers, said apparatus

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comprising a primary supporting frame having a plurality of vertical leg members, a capping head 16 disposed in vertically adjustable relation to said primary supporting frame as described in column 3, line 47, said cap driver 22 assembly being mechanically coupled to said capping head, primary height adjusting means for imparting vertical movement to said capping head as discussed in column 3, line 46, a driving means including a servomotor 24 for transmitting a predetermined torque to said cap driver assembly, said driving means being mounted on said height adjusting means and mechanically coupled to said capping head as seen in Figure 1, and closed loop controlling means for applying said predetermined torque further including a central processing unit for conducting proportional, integral, and derivative control calculations, an operator console for setting parameters that govern application of said torque transmitted by said cap driver assembly to said caps, and a servocontroller interfaced for bi-directional communication with said central processing unit, said servocontroller generating an output signal to said servomotor based on the position of said cap driver assembly for torquing said caps such that said predetermined torque is attained as in column 5, lines 36-57 (as in claim 1), wherein said servo controller is capable of generating a theoretical position profile represented by $POS_THEORET(t)$ and wherein servo controller receives position feedback represented by $POS_REAL(t)$ obtained from an incremental position monitoring device, $POS_THEORET(t)$ being compared to $POS_THEORET(t)$ and any discrepancy therebetween generating a portional, integral, and derivative output control signal represented by $S(t)$ and wherein the mathematical relation is expressed as $S(t)=POS_THEORT(t)-POS_REAL(t)$, wherein (t) is a time

base, said servocontroller being programmed to automatically set $S(t)=0$ whenever $POS_THEORET(t)-POS_REAL(t)$ exceeds E_LIMIT wherein E_LIMIT is a programmable parameter governing said predetermined torque as described in column 5, lines 35-57 (as in claim 2), but does not show a cap driver assembly including an inflatable gripping means for application of a predetermined torque to said caps, and container indexing means mechanically attached to said driving means for synchronous advancement of said containers to said cap driver assembly for torquing.

However, Stover teaches the use of a cap driver assembly including an inflatable gripping means 84 for application of a predetermined torque to said caps for the purpose of applying caps in a high speed operation thereby increasing efficiency as described in column 1, lines 50-55.

With respect to claim 12, Stover also teaches a housing containing a gear mechanism and at least one input shaft having a hollow core for transmission of torque from a driving means to a cap driver assembly, said core being in fluid communication with said gripping means and permitting the flow of compressed air and vacuum as seen in Figure 1 and described in column 3, lines 10-32.

Therefore it would have been obvious to one having ordinary skill in the art to use inflatable gripping means with Grove et al.'s device in order to apply caps in a high speed operation and increase efficiency.

Moreover, Ruhl et al. teaches the use of a container indexing means 16 mechanically attached to a driving means 42 for synchronous advancement of said containers to said cap driver assembly for torquing for the purpose of moving the

container to a capping position (as in claim 1), wherein said container indexing means further comprises a rotatable starwheel having a plurality of radially disposed slots formed therein for incrementally advancing said containers to said cap driver assembly for torquing (as in claim 14), a conveying means for delivery of said containers to said rotatable starwheel (as in claim 15) as described in column 4, line 22. Ruhl et al.

With respect to claims 6,7, and 8, Ruhl teaches a supporting frame including a cap dispensing means, in the form of a vibratory cap feeding bowl, mounted thereon for the purpose of transmitting caps down a feed track, wherein said cap dispensing means further includes a cap placement station 50, as in column 3, lines 42-50.

Therefore it would have been obvious to one having ordinary skill in the art to use an indexing means and cap dispenser in order to move containers through a capping station and provide caps.

With respect to claim 5, the modified device of Grove et al. does not explicitly show a secondary supporting frame having adjustable leg members and being disposed adjacent to said primary supporting frame, said secondary supporting frame being isolated from said primary supporting frame to prevent transfer of vibration therebetween.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make a unit into two units and incorporate adjustable legs, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Furthermore, separation of manufacturing units for vibration isolation is widely practiced and well known in the art.

Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make legs adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954)

With respect to claim 9, the modified device does not explicitly teach a secondary supporting frame including an automatic secondary height adjusting means; however, in view of the above discussion, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a secondary frame with adjusting means, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. V. Bemis Co.*, 193 USPQ 8.

13. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grove et al. (6,105,343) in view of Stover (2,891,366) and further view of Ruhl et al. (5,301,488) in further view of Sonnenberg (2,349,524).

The modified device of Grove et al. discloses the invention substantially as claimed including wherein said inflatable gripping means includes an elastic gripper disposed about a cylindrical sleeve, seen in Figure 1 of Stover, forming an expandable chamber therebetween, said chamber being disposed in fluid communication with a source of compressed fluid such that said gripper is inflatable to engage said caps for

application of said torque. The modified device of Grove et al. does not show where the chamber is an air chamber is the compressed fluid is air; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize air instead of hydraulic fluid since the examiner takes Official Notice of the equivalence of air and hydraulic fluid for their use in the packaging art.

For instance, Sonnenberg teaches the use of air to inflate a gripping means in a bottle cap with air for the purpose of compressing a cap onto a container utilizing compressed air as describe in column 2, line 18.

Therefore, the selection of any of these known equivalents in order to grip a cap would be within the level of ordinary skill in the art.

With respect to claim 4, the modified device of Grove does not explicitly disclose an air chamber with a vacuum source; however, Sonnenberg teaches wherein an expandable air chamber is simultaneously in fluid communication 233 with a vacuum source for the purpose of evacuating said air chamber in column 6, lines 10-20.

Therefore, it would have been obvious to provide a vacuum source to the modified device of Grove in order to reduce the gripping force on a cap.

14. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grove et al. (6,105,343) in view of Stover (2,891,366).

Grove et al. discloses the invention substantially as claimed including the above except for inflatable gripping means for torquing caps.

However, Stover teaches the use of a cap driver assembly including an inflatable gripping means 84 for application of a predetermined torque to said caps for

the purpose of applying caps in a high speed operation thereby increasing efficiency as described in column 1, lines 50-55.

Therefore it would have been obvious to one having ordinary skill in the art to use inflatable gripping means with Grove et al.'s device in order to apply caps in a high speed operation and increase efficiency.

Allowable Subject Matter

15. Claims 10, 11 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are Aidlin et al., Desom, Tanaka et al., C.Schmutzer et al., Engle, Van der Meer, Oldenburg et al., White, and West.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

lbt
November 12, 2002

A handwritten signature in black ink, appearing to read "Rinaldi I. Rada". The signature is fluid and cursive, with the first name "Rinaldi" and last name "Rada" clearly distinguishable.

Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700